

1 GLENN D. POMERANTZ (SBN 112503)
glenn.pomerantz@mto.com

2 MELINDA E. LEMOINE (SBN 235670)
melinda.lemoine@mto.com

3 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, 35th Fl.
4 Los Angeles, California 90071-1560
Telephone: (213) 683-9100
5 Facsimile: (213) 687-3702

6 ROSEMARIE T. RING (SBN 220769)
rosemarie.ring@mto.com

7 MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Fl.
8 San Francisco, CA 94105-2907
Telephone: (415) 512-4000
9 Facsimile: (415) 512-4977

10 Attorneys for Defendants BUENA VISTA
HOME ENTERTAINMENT, INC.; THE
11 WALT DISNEY COMPANY; WARNER
BROS. ENTERTAINMENT INC.;
12 WARNER BROS. HOME
ENTERTAINMENT INC.; UNIVERSAL
13 STUDIOS HOME ENTERTAINMENT
LLC; PARAMOUNT PICTURES
14 CORPORATION; SONY PICTURES
ENTERTAINMENT INC.; SONY
15 PICTURES HOME ENTERTAINMENT
INC.

16 UNITED STATES DISTRICT COURT
17
18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

19 CHRISTINE ANTHONY, et al.,

20 Plaintiffs,

21 vs.

22 BUENA VISTA HOME
23 ENTERTAINMENT INC., et al.

24 Defendants.

Case No. 2:15-cv-09593-SVW-JPR

**DECLARATION OF MELINDA E.
LEMOINE IN SUPPORT OF
STUDIOS' SPECIAL MOTION TO
STRIKE PURSUANT TO
CALIFORNIA ANTI-SLAPP
STATUTE**

25 Date: March 21, 2016
26 Time: 1:30 pm
27 Place: Courtroom 6, 2nd Floor
28 Judge: Hon. Stephen V. Wilson

DECLARATION OF MELINDA E. LEMOINE

I, Melinda E. LeMoine, declare as follows:

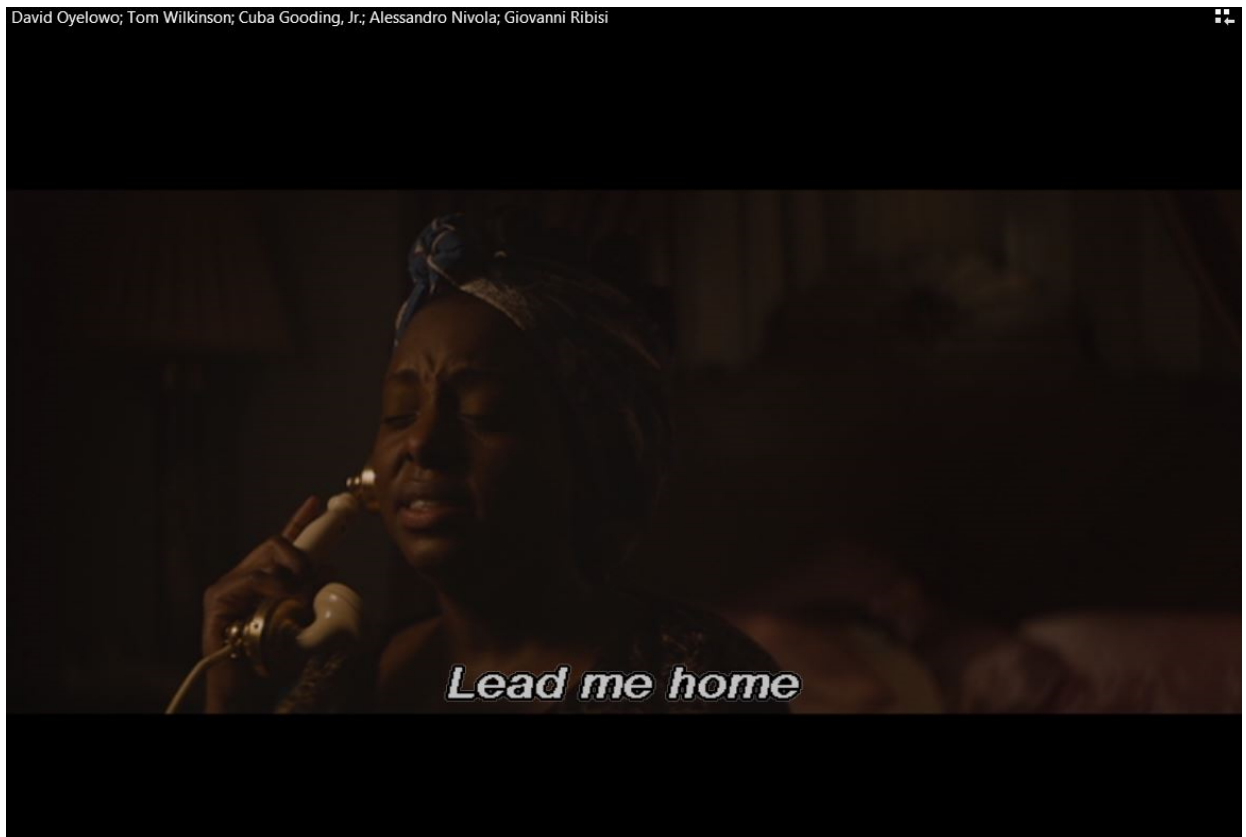
1. I am admitted to practice before all of the courts of the State of California and this Court. I am a partner with the law firm of Munger, Tolles & Olson, LLP, which represents Defendants Buena Vista Home Entertainment, Inc.; The Walt Disney Company; Warner Bros. Entertainment Inc., erroneously sued as Warner Bros. Entertainment, Inc.; Warner Bros. Home Entertainment Inc., erroneously sued as Warner Home Entertainment, Inc.; Universal Studios Home Entertainment LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; and Sony Pictures Home Entertainment Inc. (collectively, “Studios”) in the above-captioned action.

2. I submit this declaration in support of the Studios’ Special Motion to Strike Pursuant to California Anti-SLAPP Statute, Cal. Code Civ. P. 425.16 *et seq.* The facts stated in this declaration are true and are based upon my personal knowledge. If called upon to do so, I could testify truthfully and competently to them.

3. I, or others at my direction, reviewed several of the movies and television shows cited by Plaintiffs in their Complaint. We observed that lyrics are sometimes captioned, often when a character sings a song on screen. We also observed that lyrics are sometimes *not* captioned, including where they appear not to contribute meaningfully to the viewer’s understanding of the storyline or might inhibit the viewer’s understanding of the storyline. For example, we observed that where music is playing behind dialogue, the dialogue – not the lyrics – tends to be captioned. We did not observe a strict rule governing when lyrics are captioned or not captioned. Rather, based on our observations, it appears that captioners/subtitlers often make choices about what lyrics to caption based, at least in part, on the context in which the song appears.

1 4. The following are some examples of instances we observed where
2 lyrics are captioned, and where lyrics are not captioned, among some of the movies
3 and television shows cited in Plaintiffs' Complaint.

4 5. In the movie *Selma*, which we viewed on DVD, the lyrics are captioned
5 where one character sings to another character over the phone. In this scene, Martin
6 Luther King is in need of comfort and asks a woman to sing to him. She sings him a
7 spiritual hymn. Captioning the lyrics in this instance appears to communicate the
8 comfort the woman is providing to King. In contrast, the movie does not caption the
9 lyrics to background music playing in another scene.



1 6. In the movie *Major League*, which we viewed on DVD, Charlie
2 Sheen's character, Ricky Vaughan, is nicknamed "Wild Thing." When the crowd at
3 a baseball stadium sings the well-known song "Wild Thing" to him, the lyrics are
4 captioned. Here, captioning the lyrics appears to communicate the crowd's
5 relationship to Sheen's character.



1 7. In the movie *Wet Hot American Summer*, which we viewed on DVD,
2 the lyrics are captioned in several instances: for the music over the opening credits,
3 for background music that emphatically announces the entry of a particular
4 character, and for certain songs sung by characters on screen. In contrast, where
5 background music plays during a transition between scenes, the lyrics are not
6 captioned.





1 8. We observed that sometimes lyrics are captioned or subtitled until
2 dialogue interrupts, at which point the text shifts to focus on the dialogue instead. In
3 the movie *Rain Man*, which we viewed on Netflix, where Tom Cruise's character
4 teaches Dustin Hoffman's character to dance, the background song's name and the
5 first line of its lyrics are captioned. But once the characters begin to speak, the
6 dialogue is captioned *instead* of the lyrics. In the next scene, which occurs in a
7 crowded casino, the captions announce the existence of background vocal music and
8 chatter. Once again, the dialogue is captioned, rather than the lyrics of the faint
9 background music.

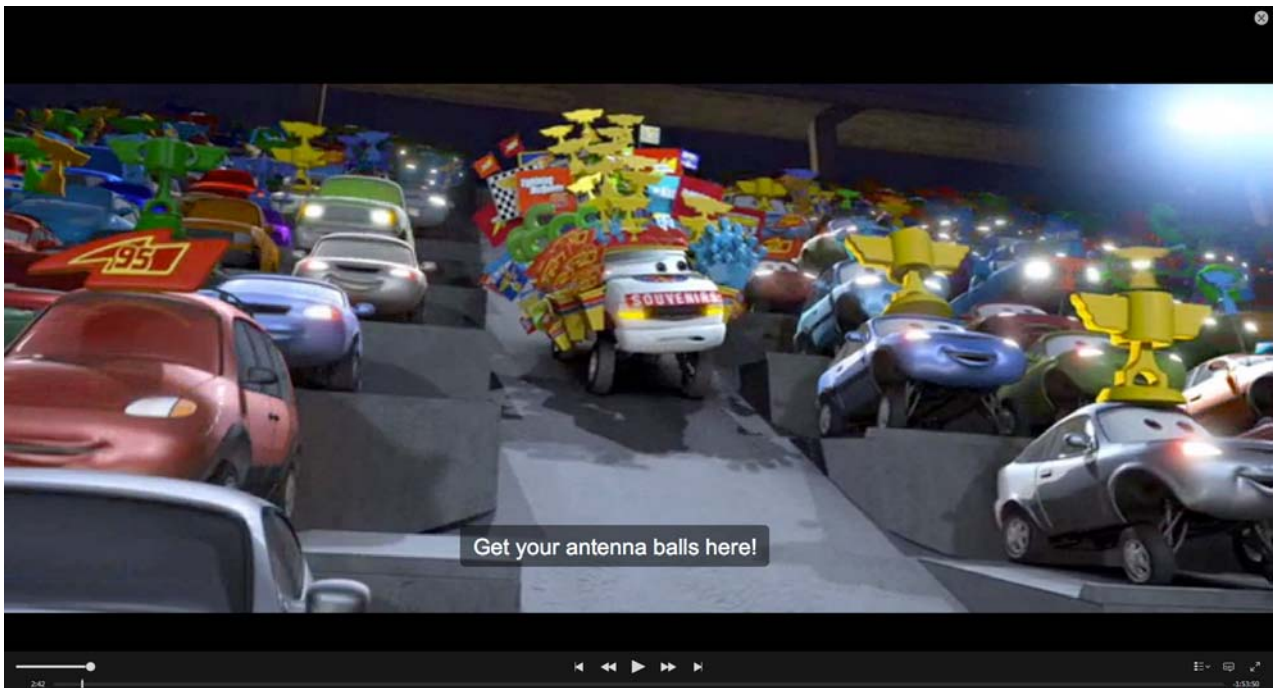






1 9. Similarly, in the movie *Cars*, which we viewed on iTunes, a
2 background song plays during a scene featuring the main character, Lightning
3 McQueen. In the captions, first the artist and song title appear, followed by the song
4 lyrics. Captioning the song lyrics appears to communicate information about
5 Lightning McQueen's attitude. When other characters speak during the song,
6 however, the dialogue is captioned instead of the song lyrics.





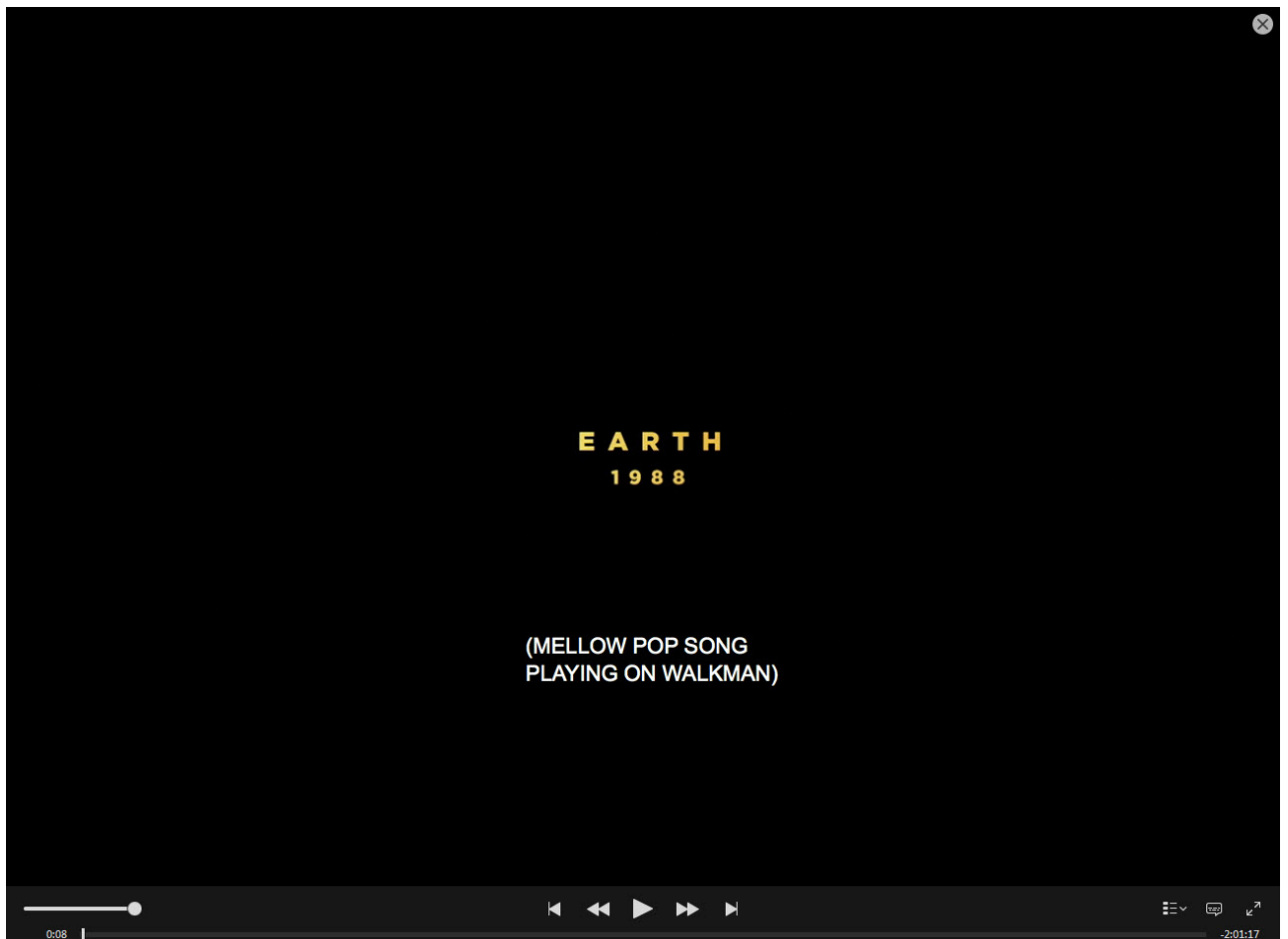
1 10. We also observed instances in which the captioning or subtitling
2 appears to communicate the mood of the music, rather than the specific lyrics. For
3 example, in one scene of the movie *The Theory of Everything*, which we viewed on
4 DVD, the dialogue is captioned while the background music is indicated as “(Music
5 Playing).” In another scene, operatic music plays in the background. The scene is
6 captioned “(Opera Music Playing)” to communicate the type of music playing.



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1 11. Similarly, in certain scenes of the movie *Guardians of the Galaxy*,
2 which we viewed on iTunes, the captions communicate the fact and type of the
3 music playing, but not the specific lyrics themselves. Captions such as “Mellow
4 Pop Song Playing on Walkman” apparently communicate the mood the music is
5 setting.
6



1 12. Attached hereto as **Exhibit A** is, upon information and belief, a true
2 and correct copy of the notice of amended motion and joint motion for preliminary
3 approval of a settlement class filed in *Boltz v. Buena Vista Home Entertainment,*
4 *Inc.*, No. BC 323842 (Cal. Super. Ct., L.A. Cty., Apr. 20, 2006). The amended
5 agreement of settlement, compromise, and release reached in that case begins on
6 page 21 of Exhibit A.

7 13. Attached hereto as **Exhibit B** is, upon information and belief, a true
8 and correct copy of an article written by Lily Bond for 3Play Media, entitled *How*
9 *Subtitles for the Deaf and Hard-of-Hearing (SDH) Differ from Closed Captions.*
10 The article is available at [http://www.3playmedia.com/2014/05/21/how-subtitles-](http://www.3playmedia.com/2014/05/21/how-subtitles-deaf-hard-of-hearing-sdh-differ-from-closed-captions/)
11 [deaf-hard-of-hearing-sdh-differ-from-closed-captions/](http://www.3playmedia.com/2014/05/21/how-subtitles-deaf-hard-of-hearing-sdh-differ-from-closed-captions/).

12 14. Attached hereto as **Exhibit C** is, upon information and belief, a true
13 and correct copy of an press release written by Daniel Ors for the Alexander
14 Graham Bell Association for the Deaf and Hard of Hearing, entitled *Members File*
15 *Lawsuit*. The article is available at
16 <http://www.agbell.org/ClassActionSuitOctober2015/>.

17 15. Attached hereto as **Exhibit D** is, upon information and belief, a true
18 and correct copy of the plaintiffs' memorandum of points and authorities in support
19 of the joint motion for preliminary approval of the settlement and certification of a
20 settlement class filed in *Boltz v. Buena Vista Home Entertainment, Inc.*, No. BC
21 323842 (Cal. Super. Ct., L.A. Cty., Feb. 6, 2006).

22 16. Attached hereto as **Exhibit E** is, upon information and belief, a true
23 and correct copy of the terms of use for Netflix, Inc.'s subscription streaming
24 service, available at <https://help.netflix.com/legal/termsofuse>.

25 17. Attached hereto as **Exhibit F** is, upon information and belief, a true and
26 correct copy of the terms of use for Amazon.com, Inc.'s subscription streaming
27 service, available at
28 <http://www.amazon.com/gp/help/customer/display.html?nodeId=201422760>.

